THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

ONE SOUTH STATION

BOSTON, MA 02110

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December 15, 2004

Mr. John L. Conroy
Vice President - Regulatory
Verizon Massachusetts
185 Franklin Street
Boston, MA 02110

RE: Verizon Petition to Grandfather Certain Retail Services, D.T.E. 04-107

Dear Mr. Conroy;

I. INTRODUCTION

On October 22, 2004, Verizon Massachusetts ("Verizon") filed with the Department of Telecommunications and Energy ("Department") a petition and proposed tariff revisions to its tariff M.D.T.E. No. 10 to "grandfather" certain residence and business services and to withdraw four unsubscribed toll services, pursuant to Paragraph R of its Alternative Regulation Plan. On November 19, 2004, the Department suspended Verizon's proposed tariff revisions for thirty days "unless otherwise ordered by the Department." D.T.E. 04-107, Suspension Order (November 19, 2004). For the reasons discussed below, the Department vacates the Suspension Order, grants Verizon's petition, and approves Verizon's tariff revisions.

II. VERIZON'S PROPOSAL

Under its grandfathering proposal, Verizon would cease offering certain services to new customers, although customers subscribed to grandfathered services as of the effective date of the proposed tariff revisions can retain the grandfathered services at their existing service location.

The access line services Verizon proposes to grandfather are: Circle Calling Service, Suburban Service, Metropolitan Service, Bay State East Service (Metropolitan), Bay State East Service (Non-Metropolitan), Call Around 413 Plus Service, Eastern LATA Unlimited Calling Plan, Residential Trunk Lines Service, Joint User Service, and Dormitory Communication Service. The toll services to be grandfathered are: Selective Calling Service, Measured Circle Calling Service, Expanded Community Calling Service (Residence and Business), Call Around 413 Service, Weekend Choice Plan, and Special Reserved Charge Toll Service. The value-added services Verizon proposes to grandfather are: Custom Calling Service Package (Residence and Business), Busy Redial/*69 Package Rate - Monthly and Cap (Residence and Business), and ISDN Basic (Residence). The service packages Verizon proposes to grandfather are: Multi-line Package Bonus Discount, Package Bonus Discount, Verizon Metropolitan Package, and Verizon Metropolitan Package Extra.

Verizon also proposes to withdraw four toll services that it contends have had no subscribers since at least 2003. These toll services are: Outward Firm Rate Plan, Inward Firm Rate Plan, 800 Dedicated Toll Free Service, and Circuit 9 Service.

On October 27, 2004, the Department invited interested persons to comment on Verizon's proposal. The Department received initial comments from AT&T Communications of New England, Inc. ("AT&T") and Mr. Andrew Applegate, a residential consumer from Georgetown, MA. Verizon filed reply comments on November 15, 2004. In addition, the Department issued information requests ("IRs") to Verizon on November 5 and 10, 2004.

III. POSITIONS OF THE COMMENTERS

A. Verizon

According to Verizon, "[a]s a result of the introduction of new services and readily available competitive alternatives, the in-service quantities of a number of [Verizon's] older services have dramatically declined, and there has been limited and declining inward movement" (Verizon Filing at 2). Verizon maintains that the resource requirements necessary to support these declining services from a systems, sales, and support perspective is not cost effective or efficient (id. at 2). Verizon states that it seeks to grandfather these services instead of withdrawing them in order to avoid any disruption for the customers currently subscribed to the grandfathered services (id.)

Verizon maintains that customers are demanding flat-rate packages that include vertical services,[1] and that Verizon has responded to customer demands with new packages that provide greater value to the customer (id. at 3). For example, Verizon argues that its Regional Plan Unlimited, which includes unlimited intraLATA calling and a vertical services package for

[1] "Vertical services" are add-ons to local service, such as voice-mail or call waiting.

$35.00 per month, is a less expensive option for consumers who currently subscribe to the Eastern LATA Unlimited Calling Plan, Circle Calling Service, or Bay State East (Metropolitan) services, which have charges of $48.69, $38.14, and $36.39 per month, respectively (id. at 2-3).

In its Reply Comments, Verizon argues that its proposal is not adverse to resellers' interests because resellers are treated the same as Verizon concerning the retail services, including the grandfathered services, that they can offer to their customers (Verizon Reply Comments at 2). Verizon also notes that as of July 2004, less than 0.3 percent of the in-service quantities of the grandfathered services were resold lines, and argues that this level of resale quite allays any potential concern for an anticompetitive effect on resellers (id. at 3). Verizon argues that consumers are unharmed by its proposal because the number of alternative options available, both from Verizon and other carriers, including wireless and voice over internet protocol ("VoIP") is substantial (id. at 2). Verizon maintains that it provided notice of its proposal to its own retail customers, to the Attorney General, and to competitive local exchange carriers ("CLECs") operating in Massachusetts, but that only AT&T has argued for suspension and further investigation (id. at 1).

B. AT&T

AT&T argues that the Department should suspend Verizon's tariff revisions and conduct an investigation into the effect of those revisions on retail customers and competitive carriers (AT&T Comments at 2). AT&T argues that CLECs' interest in offering service to customers through resale of Verizon's services may be heightened in the near future due to changes in the availability of unbundled network elements ("UNEs") (id. at 2, 6). AT&T maintains that if Verizon's tariff revisions are approved, AT&T and other CLECs will be unable to offer the grandfathered services to their own customers (id.) AT&T contends that resale of Verizon's services may soon be the only means for CLECs to serve retail customers, and Verizon's proposed elimination of services just prior to the time when CLECs may need them to compete "raises questions about an anticompetitive motive" (id. at 5).

AT&T also argues that the Department froze Verizon's residential prices in Verizon Alternative Regulation, D.T.E. 01-31-Phase II (2003), and that "Verizon cannot evade a price freeze requirement by simply shutting down lower priced services meeting the needs of certain consumers and forcing those consumers to purchase higher priced services with bells and whistles they do not need" (AT&T Comments at 6). AT&T maintains that Verizon has not demonstrated that its elimination of certain calling plans satisfies the Department's price freeze, and that the Department should investigate the effect of Verizon's pricing changes on consumers (id. at 6-7).

C. Andrew Applegate

The Department received e-mail comments from Mr. Applegate, a residential consumer residing in Georgetown, Massachusetts, who objected to Verizon's proposal on the grounds that if he ever changes his phone number or moves, he believes he will be forced to pay an additional $13.00 per month for features he neither needs nor wants (Applegate Comments at 1). Mr. Applegate indicates that if Verizon's proposal is approved and he is ever forced to switch to a different plan, he "would more seriously consider switching entirely to cell phone service . . ." (id.). Mr. Applegate argues that he'd switch now but for his preference for wireline 911, which he will nonetheless give up if Verizon is permitted to grandfather his current service (id.).

IV. ANALYSIS AND FINDINGS

A. Introduction

Paragraph R of Verizon's Alternative Regulation Plan ("Plan") states:

> Verizon MA will continue to offer all the Intrastate services provide under tariff as of the date of Department approval of the Plan unless it petitions and receives approval from the Department to withdraw a service.

Alternative Regulation Plan at 5 (approved June 6, 2003). Although the above provision does not state the specific factors that the Department should consider in reviewing such a request, we can look to determinations made by the Department in developing the Plan in Alternative Regulation, D.T.E. 01-31-Phase I (2002) and Phase II (2003) regarding Verizon's retail business and residential services, in order to evaluate Verizon's proposal here.

B. Overview of Verizon's Alternative Regulation Proceeding

Verizon's Alternative Regulation Plan was the result of a two-year investigation by the Department into the appropriate form of regulation to succeed the "price-cap" regulatory model that Verizon had been operating under since 1995. The Department divided its investigation into an evaluation of Verizon's retail business services (Phase I) and a separate evaluation of Verizon's retail residential services (Phase II). With respect to Verizon's retail business services, the Department concluded that there was sufficient competition to allow Verizon upward pricing flexibility for those services. Alternative Regulation, D.T.E. 01-31-Phase I, at 91 (2002) ("Phase I Order"). However, Verizon did not petition for nor did the Department investigate whether there was sufficient competition for residential services. For non-basic residence services, the Department continued to allow Verizon pricing flexibility, finding that because such services are "premium services," they should remain subject to market-based pricing. Alternative Regulation, D.T.E. 01-31-Phase II, at 85-86 (2003) ("Phase II Order"). Conversely, the Department determined that Verizon's residence basic exchange rates should remain subject to price regulation (i.e., the rates remain "frozen" until Verizon demonstrates sufficient competition for those services). Id. at 79, 83.

C. Grandfathering of Verizon's Retail Business Services

Many of the services Verizon proposes to grandfather are retail business services, which, as indicated above, are subject to market-based pricing under the Plan. As discussed below, we find that the same market forces that we relied upon in D.T.E. 01-31 to ensure just and reasonable rates for Verizon's business services are sufficient to protect consumers where Verizon seeks to grandfather or withdraw those services.

In finding that there was sufficient competition for business services to warrant upward pricing flexibility,[2] the Department determined that market forces would constrain Verizon's ability to raise retail business rates above just and reasonable levels. Phase I Order at 89-95. Specifically, the Department found that in those areas in Massachusetts where CLECs provide competing services to business customers, any attempt by Verizon to raise retail rates above just and reasonable levels would result in loss of customers because of the willingness and ability of business customers to switch their service to a competitor. Id. at 88-89. In those areas where CLECs were not providing competing services, the Department found that the threat of potential competition would likewise constrain any attempt by Verizon to price its service above just and reasonable levels because CLECs' access to resold services and unbundled network elements ("UNEs") allow CLECs to easily enter a market in response to a price increase by Verizon. Id. at 89-90. The Department found that this ease of CLEC entry would protect end-users because any attempt by Verizon to earn monopoly profits from end-users in a relatively under-served part of the state would make it that much more profitable for CLECs to enter that market and begin competing for those end-users. Id.

We determine that these same market forces will protect business customers with regard to the retail business services that Verizon proposes to grandfather here. Given the sufficient competition in the business services market, we determine that business customers will be able to obtain, either from Verizon or a competitor, the types of innovative business services that they demand. Access to UNEs allows CLECs to compete with Verizon to provide business customers with innovative services, where a CLEC does not offer its own full facilities-based

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[2] The only retail business service not subject to market-based pricing flexibility is private line service. Alternative Regulation Plan at 2, ¶ G (approved June 6, 2003).

product alternatives. In addition, the growing emergence of VoIP-based services provide business customers with additional options for meeting their service needs.

In addition, we recognize that market forces will ensure the right product mix for Verizon's business customers and that there is no need for the Department to determine which products and services Verizon offers to business customers. Market forces provide the appropriate incentives to Verizon to provide products and services that business customers desire and to withdraw those services that are no longer in demand by those customers. This is consistent with the regulatory policy we apply to non-dominant carriers; those carriers are subject to market-based pricing standards and may introduce or withdraw products or services based on market forces.

D. Grandfathering of Verizon's Residential Services

1. "Non-Basic" Residential Services

The remaining services that Verizon seeks to grandfather are residence access line, toll, and value-added services. Many of these residence services, particularly the toll and value-added services, are "non-basic" and are subject to market-based pricing under the Plan. See Alternative Regulation Plan, Att. B (approved June 6, 2003).[3] In the Phase II Order, the Department determined to continue a policy adopted in 1990 to regulate non-basic residential services differently from basic residential services and allow Verizon to price its non-basic services based on market conditions and revenue-maximization. Phase II Order at 84-85. The Department stated that "[t]his pricing flexibility is consistent with our treatment of retail business services . . . ." Id. at 85. The Department noted that "[w]hile the Department has not imposed upon Verizon's residential services a test for 'sufficient competition' such as we have imposed on Verizon's business services, the Department can conclude from the record in this proceeding that there is existing competition for Verizon's residential services, and that competition for these services is growing. There is no doubt that there is more competition for residential services now than when the Department first developed its flexible regulatory framework in 1985." Phase I Order at 104 (citations omitted). Thus, consistent with our treatment of business services and non-basic residential services in the Plan, and as discussed above with regard to those business services Verizon proposes to grandfather here, we determine that we can likewise rely on market forces to protect customers with regard to the

3 Verizon's basic residential services include the residential dial-tone line, measured and unlimited usage, and Suburban, Metropolitan, Circle and Expanded Community Calling services. Verizon's non-basic residential services include all other residential services.

non-basic residential services Verizon offers. Accordingly, we find that Verizon's proposal for grandfathering those non-basic residential services is reasonable.

2. "Basic" Residential Services

Verizon also proposes to grandfather four basic residential services. These four services are Circle Calling Service, Suburban Service, Metropolitan Service, and Expanded Community Calling Service (Residence).[4] Because Verizon's basic residence services remain subject to price regulation, and because it would be inconsistent with our determinations in D.T.E. 01-31 to rely solely on market forces to protect basic residential customers, in order for the Department to approve grandfathering or withdrawal of Verizon's basic residence services, Verizon must demonstrate the following: 1) that basic residential customers have sufficient alternatives to the grandfathered services; and 2) that the Department's goal of rate continuity is maintained.[5] For the reasons discussed below, the Department finds that Verizon has made this demonstration with regard to the services Verizon proposes to grandfather here.

As subscribership data show, customers have been migrating from the basic services Verizon seeks to grandfather in significant numbers in favor of more innovative, cost-effective packages (Verizon Filing, Att. 2). In addition, customers are leaving Verizon entirely in favor of services offered by CLECs, including cable telephony. See Alternative Regulation, D.T.E. 01-31-Phase I, Update to Massachusetts Competitive Profile (filed February 18, 2004).

In addition, Verizon has persuasively shown that it offers sufficient comparable options to the grandfathered basic residential services (i.e., service plans that offer more value and in most cases are less expensive than the services Verizon intends to grandfather). Verizon's proposal is also consistent with the Department's goal of rate continuity because 1) in most cases the comparable offerings are less expensive or would provide greater value than is offered currently, and 2) the prices of the grandfathered basic services will remain the same. In fact, the proposal will have no immediate effect on current customers, as any customer subscribed to the grandfathered service as of the effective date of the tariff can keep the service at their existing location. We recognize that new customers will not be able to subscribe to the

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4 These four services account for only a small percentage of all residential access lines.

5 See New England Telephone and Telegraph Co., D.P.U. 89-300, at 188-189 (1990) (Department evaluation of request to withdraw Telpak service). In addition to rate continuity, the Department's specific ratemaking goals are efficiency, fairness, earnings stability, simplicity, and universal service. IntraLATA Competition, D.P.U. 1731, at 19-24 (1985).

grandfathered basic services, and that existing customers who move locations or who switch to a new service will not be able to retain or re-subscribe to the grandfathered service. However, as discussed above, the number of customers who might be affected by Verizon's proposal is steadily declining, and we conclude that there is no sufficient basis for the Department to require Verizon to continue to offer services which market data show are increasingly less desirable to consumers.

AT&T is correct that Verizon's grandfathering proposal has the potential to affect CLECs that resell Verizon's services, including basic services, because Verizon will no longer be required to offer the grandfathered services for resale pursuant to Verizon's resale tariff, M.D.T.E. No. 14, except where the CLEC already has such a customer. However, the overall competitive effect is likely to be minor, as resold lines account for less than 0.3 percent of the in-service quantities of the grandfathered services (Verizon Reply Comments at 2). Even if the resellers' reliance on the grandfathered services were robust, neither the Telecommunications Act of 1996 nor Federal Communications Commission ("FCC") rules require an incumbent local exchange provider ("ILEC"), such as Verizon to tailor its menu of retail services in a competitive market to reflect the resellers' desired product line. In the Local Competition Order,[6] the FCC expressly declined to issue rules on the withdrawal of services offered by ILECs, and found that the FCC's own prohibitions on ILEC resale restrictions do not apply to withdrawal of service. Local Competition Order at ¶ 968.

We also do not find persuasive AT&T's argument that Verizon's proposal may violate the residential price freeze imposed on basic residence services in D.T.E. 01-31. Most of the services being grandfathered are subject to market-based pricing, and are therefore not subject to the price freeze. For the four price-regulated basic access services, Verizon is not proposing a price increase, it is merely making the service unavailable to new customers.

E. Withdrawal of Services

In addition to the grandfathering discussed above, Verizon's proposal calls for the withdrawal of four services: Outward Firm Rate Plan, Inward Firm Rate Plan, 800 Dedicated Toll Free Service, and Circuit 9 Service. Verizon argues that none of these services have had any customers since at least 2003. As the services are completely unsubscribed and have been for some time, indicating a lack of demand for these services, we find the withdrawal to be reasonable.

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[6] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (released August 8, 1996).

F. Conclusion

For the reasons stated above, we vacate the Department's November 19, 2004 Suspension Order, grant Verizon's Petition pursuant to Paragraph R of its Alternative Regulation Plan, and approve Verizon's revisions to tariff M.D.T.E. No. 10, filed with the Department on October 22, 2004.

By the Department,

/s/
Paul G. Afonso, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Eugene J. Sullivan, Jr., Commissioner

/s/
Deirdre K. Manning, Commissioner

cc: D.T.E. 04-107 Service List